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10/660,659	09/12/2003	Robert C. Hochtritt	1517-1032	7581
466	7590	12/12/2006	EXAMINER	
YOUNG & THOMPSON 745 SOUTH 23RD STREET 2ND FLOOR ARLINGTON, VA 22202			SHARMA, RASHMI K	
			ART UNIT	PAPER NUMBER
			3651	

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/660,659  
Filing Date: September 12, 2003  
Appellant(s): HOCHTRITT ET AL.

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Andrew J. Patch  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 9/20/2006 appealing from the Office action mailed 4/20/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,100,010	Petterson et al.	3-1992
1,151,064	Swift	8-1915
4,638,921	Sigl et al.	1-1987
6,830,151	Spencer et al.	12-2004

4,526,291	Margulies	7-1985
6,892,898	Boone et al.	5-2005

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### ***Claim Objections***

Claim 1 is objected to because of the following informalities: it appears that claim 1 line 6 should recite "...a majority..." and claim 1 line 7 should recited "...a length...". Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

Claims 8, 10 and 11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites that the angle formed by the first section is in the range of 45-85 degrees. However, if the angle in this range is equal to 45 degrees, then the angle is not "more nearly vertical", as recited in claim 1, because at 45 degrees the first section would be exactly between a vertical and horizontal position.

With regard to claims 10 and 11, the angle formed by the second section is in a range of 15-60 degrees or in claim 11 is about 45 degrees. Once again, if the angle is equal to 45 degrees, then as recited in claim 1, the angle is not "more nearly at a

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horizontal", because at 45 degrees the angle would be between a vertical and a horizontal position. Also if the angle were more than 45 degrees, as recited in claim 10, then the angle of the second section would be more nearly vertical than a horizontal position, as recited in claim 1. Clarification is required and no new matter is permitted.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petterson et al. (US Patent number 5,100,020) in view of Swift (US Patent number 1,151,064).

Petterson et al. discloses a dispenser for holding and dispensing a stack of sheet products comprising a body (20) and a stand (48), the stand comprising a base (50) for supporting the dispenser on a horizontal surface, the body (20) comprises a first upstream section (portion above the sheet products in Figure 3) extending over a majority of a length of the body and a second downstream section (portion including the sheet products) ending in a dispensing opening (36), wherein the first section forms an angle that is more nearly vertical and the second section forms an angle that is more nearly horizontal, wherein the stand (48) comprises (resilient material) attachment

structures (54) for fixing the dispenser to the horizontal surface and an openable cover (40).

Petterson et al. fails to disclose the body portion having the second section extending at an angle relative to the first upstream section, the first upstream section being straight, wherein the first and second sections form an oblique angle relative to the horizontal surface and wall mounts.

Swift does disclose a body portion having the second section (5) extending at an angle relative to the first upstream section (3), the first upstream section being straight (see Figure 2) and wall mounts (2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Petterson's body to incorporate one section being angled relative to the other as taught by Swift in order to provide for a more user friendly way for one to reach the opening of the dispenser. It also would have been obvious to vary the angle between the first and second sections in order to provide for a larger range of position orientations as desired, depending on the user's needs.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petterson et al. (US Patent number 5,100,020) in view of Swift (US Patent number 1,151,064) and further in view of Sigl et al. (US Patent number 4,638,921).

Petterson et al. as disclosed above, fails to show interfolded paper napkins.

Sigl et al. does disclose interfolded paper napkins.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace Petterson's sheet products with that of Sigl's interfolded

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paper napkins in order to provide for easier dispensing of the sheets or as a matter of user preference.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petterson et al. (US Patent number 5,100,020) in view of Swift (US Patent number 1,151,064) and further in view of Spencer (US Patent number 6,830,151).

Petterson et al. as disclosed above, fails to show wall mounting structure comprising at least two openings formed in a rear wall of the body for receiving bolts.

Spencer does disclose wall mounting structure comprising at least two openings formed in a rear wall of the body for receiving bolts.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wall mounting structure of Petterson as modified by Swift to be within the confines of the rear wall, in order to provide for a variety of ways for mounting the body to a wall structure.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Petterson et al. (US Patent number 5,100,020) in view of Swift (US Patent number 1,151,064) and further in view of Margulies (US Patent number 4,526,291).

Petterson et al. as disclosed above, fails to show flanges cooperating with the cover.

Margulies does disclose flanges (46) cooperating with a cover (4).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to add the flanges as taught by Margulies to that of Petterson's invention in order to provide a more coherent seal between the body and the cover.

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Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petterson et al. (US Patent number 5,100,020) in view of Swift (US Patent number 1,151,064) and further in view of Boone et al. (US Patent number 6,892,898).

Petterson et al. as disclosed above, fails to show a cover being either opaque or transparent.

Boone et al. does disclose a cover being either transparent (316) or opaque (read column 13 lines 52-55).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Petterson's cover to be either opaque or transparent as taught by Boone, in order for more easily viewing the interior of the dispenser and as a matter of design choice.

#### **(10) Response to Argument**

Applicant's arguments filed 9/20/06 have been fully considered but they are not persuasive.

Applicant argues that claims 8, 10 and 11 are suitably definite, however the Examiner disagrees and the 112 rejection stands. Applicant remarks that the answer to the Examiner's inquiries regarding these claims "...are describing the recited first and second sections of the dispenser body relative to one another", however the orientation of the angle between the first and second sections is not being claimed. Claim 1 clearly recites "...each of the first and second sections forms an oblique angle relative to said horizontal surface". While the two sections may be angled relative to one another, the claim language in claims 8, 10 and 11 deem these claims vague and indefinite because



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in order for the Applicant to meet the claim limitations quoted above, the angles recited in claims 8, 10 and 11 would have to be relative to the horizontal, as depicted in the drawings. The drawing fail to depict the two sections being angled relative to one another at about 45 degrees in any of the drawings. It should also be noted while Applicant argues the language and clarity of claim 1, it is in fact claims 8, 10 and 11 that are being rejected under 112<sup>th</sup> second paragraph. This is due in part to the structural limitations set forth in claim 1. By no means can an angle be "more nearly vertical" or "more nearly horizontal" as recited in claim 1 if the angle equals or is about 45 degrees relative to the other section or relative to either the vertical or the horizontal planes.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Swift's angled dispenser body does in fact teach Applicant's invention. While the opening (36) of the Swift reference may be as accessible as Petterson's opening, it should be noted that Swift's teaching of a section angled relative to another section and the rejection combining these two references as rejected above, does allow for another structure (Swift's dispenser body) to more easily dispense products and to provide for a larger

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range/size of products to be dispensed allowing for an arrangement of dispenser body sections varying in angled relation to one another.

Replacing Petterson's dispenser body with that of Swift's angled dispenser body would indeed be within the purview of one having ordinary skill in the art, regardless of what type of product is being dispensed. In this particular case, since the products of each reference, Petterson et al. and Swift, are both stackable paper products, it would be obvious to one having ordinary skill to replace the teachings of Petterson's dispenser body with that of Swift's angled dispenser body, as the angled dispenser design of Swift would operate and function with the paper products of Petterson.

Applicant argues that Swift's vertical section is deliberately dimensioned so as to be shallower than the diameter of the paper cups, such that the paper cups in the vertical section are oriented at an angle similar to that of the lower angled section of the Swift dispenser. It should be noted that the only structure being relied upon within the Swift reference is the body portion having the second section (5) extending at an angle relative to the first upstream section (3), the first upstream section being straight (as seen in Figure 2) and wall mounts (2). The dimensions of Swift's vertical section are irrelevant with respect to the structure the Examiner is relying upon in the above rejection.

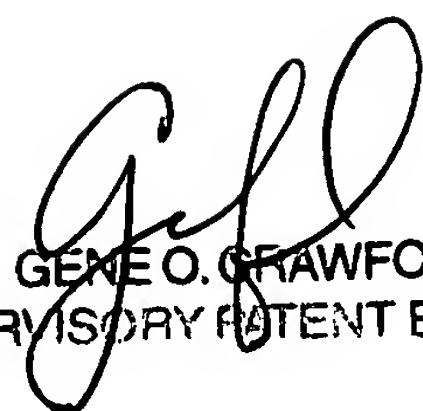
#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Rashmi Sharma 

  
GENE O. CRAWFORD  
SUPERVISORY PATENT EXAMINER

Conferees:

Gene O. Crawford 

David Bollinger 